

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

GARY ODOM,

Plaintiff and Counterclaim
Defendant,

v.

MICROSOFT CORPORATION,

Defendant and Counterclaim
Plaintiff.

No. CV 09-230-MO

OPINION AND ORDER

MOSMAN, J.,

Mr. Odom, acting pro se, submitted a motion to stay proceedings pursuant to 35 U.S.C. § 318. Under section 318, a court may stay pending patent litigation if the patent claims at issue are also the subject of an *inter partes* reexamination order. A stay is not appropriate if "the court before which such litigation is pending determines that a stay would not serve the interests of justice." 35 U.S.C. § 318. "In deciding whether to stay litigation pending reexamination, courts typically consider: (1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party, (2) whether a stay will simplify the issues in question and trial of the case, and (3) whether discovery is complete and whether a trial date has been set." *Soverain Software LLC v. Amazon.com, Inc.*, 356 F. Supp. 2d 660, 662 (E.D. Tex. 2005) (citing

Xerox Corp. v. 3Com Corp., 69 F. Supp. 2d 404, 406 (W.D.N.Y.1999)).

Based on the following findings, the Court concludes that a stay would not serve the interests of justice. First, a stay would prejudice Microsoft. Prompt resolution of these claims is necessary because this litigation, which has been pending since August 18, 2008, chills Microsoft's relationships with its distributors. Second, reexamination may not fully resolve the validity of the claims at issue in this case, nor will it resolve all the claims asserted in the trailing cases. Third, discovery in this case is complete, a deadline for dispositive motions has been set, and a trial date would have been set but for Mr. Odom's pro se status. Fourth, the Patent and Trademark Office ordered reexamination on October 29, 2009, and Mr. Odom's explanation for his delay in seeking a stay is unpersuasive in light of Microsoft's evidence. (*See Micallef Decl.* (#137) Ex. A, B, C & D.)

For the foregoing reasons, Mr. Odom's Motion for Stay is DENIED.

IT IS SO ORDERED.

DATED this 18th day of March, 2010.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court